

No. 16999

United States
Court of Appeals
for the Ninth Circuit

—
DONALD THOMAS BURR,

Appellant,

vs.

W. A. E. EDGAR, OFFICER IN CHARGE OF THE
J. S. IMMIGRATION & NATURALIZATION
SERVICE,

Appellee.

—
Transcript of Record
—

FILED

DEC 2 1960

Appeal from the United States District Court for the
Southern District of California,
Southern Division
BERNARD E. SCHMID, CLERK



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Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

EDGAR G. LANGFORD,
J. PERRY LANGFORD,
416 Spreckels Building,
San Diego 1, California.

For Appellee:

LAUGHLIN E. WATERS,
United States Attorney,
ELMER ENSTROM, JR.,
Assistant U. S. Attorney,
U. S. Customs & Courthouse Building,
San Diego 1, California.

United States District Court Southern District
of California Southern Division

2360-SD-W

In the Matter of the Application of

DONALD THOMAS BURR

for a Writ of Habeas Corpus.

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND JUDGMENT

The above-entitled matter came on regularly for hearing on petition of the above-named petitioner for Writ of Habeas Corpus on March 21, 1960, petitioner being produced in Court in response to the Court's order and being represented by appointed counsel, J. Perry Langford, Esq., and A. E. Edgar, Officer in Charge of the San Diego Office of the Immigration and Naturalization Service appearing by Elmer Enstrom, Jr., Assistant United States Attorney, and a hearing having been had, and petitioner having been admitted to bail, and a further hearing having been had on April 25, 1960, with petitioner and the respective counsel appearing, and briefs having been filed, and the matter continued until May 7, 1960 for presentation of Findings of Fact, Conclusions of Law and Judgment, the Court now makes its

Findings of Fact

I.

The Petitioner, Donald Thomas Burr, and the respondent are within the jurisdiction of this Court.

II.

The petitioner is an alien who entered the United States on October 8, 1946.

III.

An information (S.C. No. 140038) was filed in the Superior Court of the State of California, County of Los Angeles, charging in Count 2 thereof that on February 2, 1951 petitioner had issued a check without sufficient funds.

IV.

The petitioner pleaded guilty to the offense charged in Count 2 of said information on March 20, 1951.

V.

On May 9, 1951, proceedings as to Count 2 of said information were suspended and petitioner was granted probation for a period of ten years on condition that he serve 10 months of his probationary period in jail and that he make restitution, and petitioner was remanded.

VI.

On May 15, 1959, petitioner's probation was revoked and he was sentenced on Count 2 of said information to serve one year in the County Jail of the County of Los Angeles, and defendant was remanded to the custody of the Sheriff of Los Angeles County.

VII.

That an order of deportation was made pursuant to which a warrant for deportation was issued, and petitioner was, at the time of filing of this petition, detained by the Immigration and Naturalization Service of this District pursuant to such warrant.

Conclusions of Law

I.

That the Court has jurisdiction of the instant action.

II.

That the parties are within the jurisdiction of this Court.

III.

That petitioner, while an alien in the United States, had within five years after his entry into the United States, committed a crime involving moral turpitude.

IV.

That petitioner was convicted of said crime and sentenced to confinement therefor in a prison or corrective institution for a year.

V.

That petitioner is a deportable alien as classified in Title 8, United States Code, Section 1251.

Judgment

In accordance with the foregoing Findings of Fact and Conclusions of Law,

It is Hereby Ordered, Adjudged and Decreed:

(1) The writ of habeas corpus is discharged.

(2) The order of February 1, 1960 deferring further action of the Immigration and Naturalization Service on deportation of petitioner is vacated.

(3) The petitioner is remanded to the custody of the Immigration and Naturalization Service of this District.

Dated this 27th day of May, 1960.

JACOB WEINBERGER.

United States District Judge.

[Endorsed]: Filed May 27, 1960. Entered May 31, 1960.

[Title of District Court and Cause.]

NOTICE OF APPEAL

To the Clerk of the above entitled Court, to A. E. Edge,
Officer in Charge of the Immigration and Natural-
ization Service of the United States of America at
San Diego, California, and to Laughlin E. Water,
United States Attorney:

You and each of you will please take notice that Donald Thomas Burr, the applicant in the above entitled matter, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the Order and judgment rendered, made and filed in the above entitled matter on the 27th day of May, 1960, and entered on the docket on the 31st day of May, 1960.

Dated June 1, 1960.

EDGAR G. LANGFORD,
and
J. PERRY LANGFORD,
/s/ By J. PERRY LANGFORD,
Attorneys for Applicant and
Appellant.

Receipt of copy attached.

[Endorsed]: Filed June 2, 1960.

[Title of District Court and Cause.]

DESIGNATION OF CONTENTS OF
RECORD ON APPEAL.

Pursuant to Rule 75(a) of the Federal Rules of Civil Procedure, the appellant hereby designates for inclusion the record on appeal to the United States Court of Appeals for the Ninth Circuit in the above entitled matter, the following portion of the record therein:

1. Findings of Fact, Conclusions of Law and Judgment.

Dated, this 16 day of June, 1960.

EDGAR G. LANGFORD,
and

J. PERRY LANGFORD,
/s/ By J. PERRY LANGFORD,
Attorneys for Appellant.

Affidavit of Service by Mail Attached.

[Endorsed]: Filed June 16, 1960.

[Title of District Court and Cause.]

STATEMENT OF POINTS UPON WHICH
APPELLANT INTENDS TO RELY ON A-
PEAL

The point upon which appellant intends to rely on appeal is:

1. The judgment is not supported by the finding of fact, in that it affirmatively appears from said findings of fact that appellant was not lawfully sentenced to confinement or confined for a year or more within the meaning of Title 8 United States Code, Section 1251(a)(1).

Dated, this 16 day of June, 1960.

EDGAR G. LANGFORD,
and

J. PERRY LANGFORD,
/s/ By J. PERRY LANGFORD,
Attorneys for Appellant.

Affidavit of Service by Mail Attached.

[Endorsed]: Filed June 16, 1960.

Title of District Court and Cause.]

CERTIFICATE BY THE CLERK

I, John A. Childress, Clerk of the above-entitled Court, hereby certify that the foregoing documents together with the other items, all of which are listed below, constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit, in the above-entitled case; and that said items are the originals unless otherwise shown on this list:

Page:

- 1 Names and Addresses of Attorneys.
- 2 (Copy) Findings of Fact, Conclusions of Law and Judgment, filed 5/27/60 and entered 5/31/60.
- 6 Notice of Appeal, filed 6/2/60.
- 8 Designation of contents of record on appeal, filed 6/16/60.
- 1 Statement of Points upon which appellant intends to rely on appeal, filed 6/16/60.

JOHN A. CHILDRESS,
Clerk.

Seal]

/s/ By WM. A. WHITE,
Deputy Clerk.

[Endorsed]: No. 16999. United States Circuit Court of Appeals for the Ninth Circuit. Donald Thomas Burr, Appellant, vs. A. E. Edgar, Officer in Charge of the U. S. Immigration & Naturalization Service, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Southern Division.

Filed: June 28, 1960.

Docketed: July 18, 1960.

/s/ FRANK H. SCHMID,

Clerk of the United States Court of Appeals for the Ninth Circuit.

